

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

**PHILIP S. PALMERI, Individually
and as Administrator of the Estate of
TRACEY L. PALMERI, Deceased,**

Plaintiff,

vs.

NL INDUSTRIES, INC.,

Defendant.

**NOTICE OF REMOVAL
UNDER 28 U.S.C. § 1332
(Diversity Jurisdiction)**

Niagara County Index No.
E183238/2024

Civil No.: _____

Defendant NL Industries, Inc. (“Defendant”), pursuant to 28 U.S.C. §§ 1332 and 1441(a), hereby files its Notice of Removal of the above action, *Philip S. Palmeri, Individually and as Administrator of the Estate of Tracey L. Palmeri, Deceased, v. NL Industries, Inc.*, Niagara County Index No. E183238/2024, from the Supreme Court of the State of New York, County of Niagara, to the United States District Court for the Western District of New York, and in support thereof states:

Process and Pleadings Served Upon Defendant

1. The Summons and Complaint in this action were filed in the Supreme Court of the State of New York, County of Niagara, Index No. E183238/2024, on April 25, 2024. A copy of the Summons and Complaint is attached hereto as **Exhibit “A.”**

2. Plaintiff, Philip S. Palmeri, Individually and as Administrator of the Estate of Tracey L. Palmeri, Deceased (“Plaintiff”), subsequently served the Summons and Complaint on NL Industries in the State of Texas on May 16, 2024 by delivering the Summons and Complaint to the Corporation Service Company, pursuant to CPLR 3012(c). Service was effectuated on May 17, 2024, upon Defendant’s receipt of the Summons and Complaint.

3. Following service of the Summons and Complaint, Defendant timely filed the instant Notice of Removal.

Grounds for Removal

4. Plaintiff's Complaint sets forth causes of action for strict liability based on ultrahazardous/abnormally dangerous activity, negligence, wrongful death, private nuisance, and trespass arising out of Plaintiff's alleged exposure to radioactive waste alleged to have been generated at Defendant's Niagara Falls, New York plant, and used as fill material deposited at the property on which the Palmeri property sits prior to its construction in 1957. Exhibit A at pars. 48-74. Plaintiff alleges the decedent, Tracey L. Palmeri, developed breast cancer and passed away as a result of her exposure to this waste material. Exhibit A, pars. 41, 42.

5. The amount in controversy herein is greater than \$75,000, exclusive of interest and costs. In particular, Plaintiff's Complaint alleges that the damages exceed the jurisdictional limits of all lower courts which would otherwise have jurisdiction, and Plaintiff specifically seeks to recover damages in a sufficient amount to compensate him for the injuries and losses sustained, including, but not limited to: injuries to the Decedent's person and her wrongful death, the difference between the value of the Palmeri Property when sold in 2023 and the value of the Palmeri Property had the alleged radioactive waste not been placed there, the value of the lost use of the Palmeri Property as a result of the alleged nuisance and trespass, and consequential damages flowing from the trespass and nuisance.

6. Plaintiff was at all relevant times a citizen of New York State. *See* Exhibit A, par. 1.

7. Defendant NL Industries, Inc. is a foreign business corporation, organized under the laws of the State of New Jersey. Defendant's principal place of business is Three Lincoln Centre, 5430 LBJ Freeway, Suite 1700, Dallas, Texas 75240-2697. *See* Exhibit A, par. 5.

8. The above-entitled action is a civil action over which this Court would have original jurisdiction pursuant to 28 U.S.C. § 1332, and which therefore may be removed to this Court pursuant to 28 U.S.C. § 1441, in that the action is between citizens of different states, and the matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$75,000.

9. A copy of the written notice required by 28 U.S.C. § 1446(d), addressed to the adverse party and to the Clerk of Niagara County, is attached as **Exhibit "B"** and will be filed in the Niagara County Clerk's Office and served on Plaintiff after the filing of this Notice of Removal in the United States District Court for the Western District of New York.

10. In compliance with Local Rule 81(a)(3), an index of all documents filed in the Niagara County Supreme Court action is attached as **Exhibit "C."**

11. Defendant consents to the removal of this action from New York State Supreme Court, County of Niagara, to the United States District Court for the Western District of New York.

Timely Filing of this Notice

12. Pursuant to 28 U.S.C. § 1446(b)(1), this notice is filed within thirty days after receipt by Defendant, through service or otherwise, of a copy of the pleading setting forth the claims for relief upon which this action is based.

13. Service and notice of the filing of this Notice of Removal will be served upon the Plaintiff as required. A true and correct copy of this Notice will be filed with the Niagara County Clerk's Office.

14. This action is therefore removable to this Court pursuant to 28 U.S.C. §§ 1332 and 1441.

WHEREFORE, Defendant NL Industries, Inc. respectfully prays for this Court to accept the removal of this action from the State Court and grant to Defendant such other and further relief as the Court deems just and proper.

DATED: June 12, 2024

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By: 

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